

OGC 78-0376
19 January 1978

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MEMORANDUM FOR: Office of Legislative Counsel

ATTENTION

FROM

Assistant General Counsel

SUBJECT : Potential Impact of Subsection 111(c), P.L. 95-94,
on Certain DCI Security Policies

1. You have asked for the opinion of this Office, whether the Director's policy of denying access to Sensitive Compartmented Information (SCI) to personal staff members of legislators is compatible with the terms of Subsection 111(c) of Public Law 95-94, 91 Stat. 662, which became effective 1 October 1977. This Subsection reads as follows:

(c)(1) A Senator may designate employees in his office to assist him in connection with his membership on committees of the Senate. An employee may be designated with respect to only one committee.

(2) An employee designated by a Senator under this subsection shall be certified by him to the chairman and ranking minority member of the committee with respect to which such designation is made. Such employee shall be accorded all privileges of a professional staff member (whether permanent or investigatory) of such committee including access to all committee sessions and files, except that any such committee may restrict access to its sessions to one staff member per Senator at a time and require, if classified material is being handled or discussed, that any staff member possess the appropriate security clearance before being allowed access to such material or to discussion of it. Nothing contained in this paragraph shall be construed to prohibit a committee from adopting policies and practices with respect to the application of this subsection which are similar to the policies and practices adopted with respect to the application of section 705(c)(1) of Senate Resolution 4, 95th Congress, and section 106(c)(1) of the Supplemental Appropriations Act, 1977.

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2. Clearly the statute establishes certain requirements and controls on the operations and performance of Senate committees and of certain Senate staff personnel. But it does not purport to require department and agency heads to do anything. It would follow, insofar as this statute is concerned, that the DCI is free to establish policy, within limitations of any executive branch regulations or directives with respect to Senate personnel access to SCI.

3. It might be argued that a policy denying access to these staffers is of questionable legality in that it tends to obstruct the Senate in the performance of its duties. But this argument would run counter to the requirement that the intelligence agencies must also perform their duties, and counter to the proviso that the Director is to protect intelligence sources and methods from unauthorized disclosure. On balance, with respect to the precise question outlined in paragraph 1 above, I believe the Director's policy is compatible with Subsection 111(c) and is lawful, even though it would not permit the Senate personnel to take part in committee proceedings in the manner prescribed by paragraph 2 of Subsection 111(c).

4. As a practical matter, it is my opinion that the existence of this provision will make it all the more difficult for the Director to continue a policy of denying access to SCI information to all personal staff members of the legislative branch, on that basis alone. Given the existence of this provision, and the provision of Executive Order 11905 directing the DCI to "... facilitate the use of foreign intelligence products by Congress," [E.O. 11905, Subsection 3(d)(1)(xi)], it is likely that the Director will come under increasing pressure to consider requests for SCI access for personal staff members of the Senate on the merits of each case presented.

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